



A Survey of Franchising in the European Union

Jesse M. Lapierre
U.S. Commercial Service
US Mission to the EU
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Summary

This report covers the EC Directives that relate to Franchisors entering the market, namely, the exemptions to the EU's general anti-trust law, the European Franchising Federation (EFF) and their 'Code of Ethics' that covers IPR protection and the relevant contacts for the individual Member State Franchising organizations.

Market Overview

US businesses looking to Franchise within the European Union will likely find that the market is quite robust and friendly to Franchise systems in general. There are a number of laws that govern the operation of franchises within the EU, but these laws are fairly broad and generally do not constrain the competitive position of US businesses. The potential franchisor should take care to look not only at the EU regulations, but also at the local laws concerning franchising. There is a general franchise association for the EU, the [European Franchising Federation](#), which represents the separate associations from 18 member states. Each of the member states has franchise association that is involved in ascertaining and analyzing differences in laws pertaining to potential franchisees. The [contacts](#) for the member associations can be found at the end of this report.

The most recent survey on franchising in the European Union was conducted back in 1997 by the European Franchise Federation. The statistics are therefore somewhat out of date.

However, it is likely that the relative positions of the member states vis-à-vis their franchise activity has not changed. The survey showed that Germany, the United Kingdom, France, Italy and Spain had the largest total population of franchise systems operating within their borders (both foreign and domestic). The next group included the Netherlands, Austria, Hungary and Sweden, with Denmark, Finland and Belgium.

The Treatment of Franchising by the Law of the European Community

The most important aspect of EU law as regards franchising is Article 81 of the Treaty of Rome. This is the EU's anti-trust law. It prohibits a number of practices commonly found in franchising. There are, however, a number of exemptions available to franchisors.

The De Minimis Exemption

Many franchisors have a market share of less than 10%. Thus, they do not need to take advantage of the block exemption as they are automatically exempted from Article 81(1).

The Block Exemption

On 22 December 1999, the new Block Exemption Regulation ([Regulation EC2790/1999](#)) was accepted, creating a new broad safe harbor exemption from the impact of Article 81 of the EC Treaty.

As stated above, Article 81(1) prohibits agreements (or practices) which prevent, restrict or distort competition. In the past it has been interpreted to catch a broad range of the vertical restraints commonly found in franchising.

Key points of EC2790/1999 for Franchisors:

Key points to note about the Regulation are:

- it is only available to franchisors with a market share of less than 30%
- it applies to both exclusive and non-exclusive arrangements
- services and goods are included
- multi-party agreements are now covered (i.e. more than two parties)
- some vertical arrangements between competitors will be exempt
- franchisors may impose maximum price restrictions on their franchisees (but not price maintenance).
- Transitional provisions meant that current franchise agreements or franchise agreements which were in force at the end of May 2000 and complied with Regulation EC 4087/88 retained their exemption from Article 81(1) until the end of December 2001.

The Commission has issued guidelines outlining its policy on interpretation of the Regulation. They are detailed and are crucial to a full interpretation of the block exemption. The Commission has indicated that it will regard itself as bound by the terms of the guidelines – although authorities and courts in Member States will not be bound by them.

What the Block Exemption means in practice

Franchising is not mentioned expressly in the Regulation, but is considered in the guidelines. The exemption will apply if the franchisor has less than 30% market share. As long as no hardcore restraints are included, the parties are left to negotiate their own terms.

Issues of Concern under the Block Exemption Regulation:

Exclusivity for Franchisors

Exclusive territories are not permitted, although a location clause will be allowed. Franchisees must be free to actively promote their sales to end users wherever located. According to the guidelines the area outside which mobile outlets may operate can also be restricted. A franchisee may be restrained from selling to unauthorized dealers outside the network.

Non-compete clauses

During the term, non-compete clauses of more than five years are not permitted unless the franchisor is the landlord of the franchisee (Article 5(a)). This will often not be the case. At the same time, the current draft guidelines provide that a non-compete clause relating to the goods or services supplied under the franchise arrangements, whilst not exempted under the block exemption, will not be caught by Article 81(1) as long as the

franchisor is not dominant in the market and the restraint is necessary 'to maintain the common identity and reputation of the franchised network'.

Post-term

A post-term non compete may be imposed if it:

- relates to goods or services which compete with the goods or services dealt with by the franchisee under the terminated agreement; and
- is limited to the premises from which the franchisee operated during the contract period; and
- is indispensable to protect the franchisor's know-how; and
- is for a period of one year after termination.
- If the franchisor cannot rely on De Minimis or SME Exemption (see page 3) then the post-term restriction will be unenforceable. The franchisor will need to amend the agreement or apply for individual exemption.

Tying

Franchisees may not be restrained from selling the brands of particular competing suppliers. Quality specifications may, however, be laid down (paragraphs 188-9 and 131 of the draft guidelines).

Timing

The new block exemption will apply to new agreements made from 1 June 2000 and will last for ten years until 31 May 2010. Existing agreements which comply with one or other of the outgoing block exemptions are 'grandfathered' in until 31 December 2001. After that they must either comply with the new block exemption or be notified for specific clearance.

Small and medium-sized enterprises

Agreements between small and medium-sized undertakings (SME's) (as defined in the Annex to Commission recommendation [96/280/EC](#)) are considered by the Commission as being rarely capable of significantly affecting trade between Member States. Consequently as a general rule they are not caught by the prohibition in Article 81(1). Medium-sized enterprises typically have less than 250 employees with a turnover of less than ECU 40 million (US\$40 million). Small-sized enterprises have a turnover of less than ECU 7 million (US\$7 million).

Member State/ National Legislation of Franchises

There is very little national legislation specific to franchising in Europe. Franchising most often falls under general civil, commercial, social, etc. law in each country.

A few countries, like France and Spain, have laws related to disclosure requirements on the part of the franchisor with regard to potential franchisees before the conclusion of the franchise contract.

The Protection of IPR in European Franchising

The EFF Code of Ethics

Since its foundation in 1972, the European Franchise Federation has defined and upheld its [European Code of Ethics for Franchising](#). Its purpose has been to uphold a self-regulatory approach to good and fair business practice in franchising in Europe.

Every EFF national member, as well as in turn, each member of the national associations or federations commits to the principles laid down in this Code.

Useful Links

The European Franchising Federation

<http://www.europeanfranchising.net/>

European Franchising Network

<http://www.europeanfranchising.com/>

International Franchise Association (US)

<http://www.franchise.org/>

EUROPA – The European Commission Homepage

http://europa.eu.int/comm/index_en.htm

Upcoming Trade Shows

International Franchise Expo 2006

Location: Washington, DC, United States

Date: 6/2/2006 - 6/4/2006

Website: <http://www.franchiseexpo.com/>

Contacts:

Monica McFarlane, Trade Event Programs

International Trade Specialist

Phone: 202-482-3364

monica.mcfarlane@mail.doc.gov

Sheila Lillien, MFV Expositions, Inc.

Phone: 201-226-1130 ext. 111

slillien@mfvexpo.com

Key Contacts

The US Commercial Service uses a world-wide network of Trade Specialists to assist US clients. Franchisors looking to expand into Europe are encouraged to contact:

Finola Cunningham

Global Franchising Team Leader

U.S. Commercial Service

U.S. Embassy

42 Elgin Rd. Ballsbridge

Dublin 4, Ireland

Tel: 011-353-1-667-4753

Fax: 011-353-1-667-4754

The contacts for the member associations for the European Franchise Federation are located below. Scroll down or use the hyperlinks:

[Austria](#) - [Belgium](#) - [Czech Republic](#) - [Denmark](#) - [Finland](#) - [France](#) - [Germany](#) - [Greece](#) - [Hungary](#) - [Ireland](#) - [Italy](#) - [Latvia](#) - [Netherlands](#) - [Portugal](#) - [Slovenia](#) - [Spain](#) - [Sweden](#) - [Switzerland](#) - [United Kingdom](#)

BELGIAN FRANCHISE FEDERATION

Belgische Franchise Federatie - Fédération Belge de la Franchise
Boulevard de l'Humanité 116/2
B - 1070 Brussels - BELGIUM

Chairman: Didier Depreay (Point Chaud)
Executive Director: Mr Arnaud Le Grelle
Tel: +32.2.523.97.07
Fax: +32.2.523.35.10
Web Site: <http://www.fbf-bff.be>
e-mail: a.le.grelle@fbf-bff.be

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BRITISH FRANCHISE ASSOCIATION (BFA)

Thames View, Newton Road
Henley-on-Thames
Oxon. RG 9 1 HG - UNITED KINGDOM

Chairman: Mr Brian Lewis (Cash Generator)
Director General: Mr Brian Smart
Tel: +44.1491.578050
Fax: +44.1491.573517
Web Site: <http://www.british-franchise.org.uk>
e-mail: mailroom@british-franchise.org.uk

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CZECH FRANCHISE ASSOCIATION

Opletalova 6,
110 00 Praha 1, Czech Republic
Tel: +420 222 244 509
Fax: +420 222 244 935

Chairman: Mr. Ales Tulpa
Director: Ms. Hana Juraskova
Web Site: <http://www.czech-franchise.cz>
e-mail: caf@czech-franchise.cz

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FRENCH FRANCHISE FEDERATION

Fédération Française de la Franchise(FFF)
60, rue de la Boétie
75008 Paris - FRANCE

President BD: Mr. F. Lacroix (Comtesse du Barry)
Directeur Général: Mrs Chantal Zimmer
Tel: +33.1.53.75.22.25
Fax: +33.1.53.75.22.20
Web Site: <http://www.franchise-fff.com>
e-mail : info@franchise-fff.com
Minitel : 3616 code FFF

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NETHERLANDS FRANCHISE ASSOCIATION

Nederlandse Franchise Vereniging (NFV)
Boombergerlaan 12
NL-1217 RR Hilversum - THE NETHERLANDS
President: Mr. J.D. van der Ent, CEO Etos B.V.

Executive Director: Mr. Jos Burgers
Tel: +31.35.624.23.00
Fax: +31.35.624.91.94
Web Site: <http://www.nfv.nl>
e-mail: franchise@nfv.nl

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ITALIAN FRANCHISE ASSOCIATION

Associazione Italiana del Franchising
Viale L. Majno, 42
20129 Milano - ITALY
Chairman: Mr. Graziano Fiorelli (Mail Boxes Etc.)
Managing Director: Mr Italo Bussoli
Tel: + 39 02 29 00 37 79
Fax: + 39 02 65 55 919
Web Site: <http://www.assofranchising.it>
e-mail : assofranchising@assofranchising.it

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AUSTRIAN FRANCHISE ASSOCIATION

Österreichischer Franchise-Verband (ÖFV)
Bayerhamerstrasse 12/1
A-5020 Salzburg - AUSTRIA/EUROPA
Chairman: Mr Cristian Wimmer (McDonald's)
Tel: +43.662.874.236-0
Fax: +43.662.874.236-5
Web Site: <http://www.franchise.at>
e-mail: sigrid.stramer@mcdonalds.at

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FINNISH FRANCHISING ASSOCIATION

Suomen Franchising-Yhdistys ry (SFY)
PL 868
08680 Lohja as - FINLAND
President: Mr Seppo Sariola (Hertz Rent a Car Finland Oy)
Executive Director: Mr Rolf Granström
Tel: +358.19.331 195
Fax: +358.19.331 075
Web Site: <http://www.franchising.fi>

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GERMAN FRANCHISE ASSOCIATION

Deutscher Franchise-Verband e.V (DFV)
Luisenstrasse 41
10117 Berlin - GERMANY
President BD: Mr Dieter Fröhlich (Muzikschule Fröhlich)
Managing Director: Mr Torben Brodersen
Tel: +49.(0)30.278.90.20
Fax: +49.(0)30.278.90.215
Web Site: www.dfv-franchise.de
e-mail: info@dfv-franchise.de

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FRANCHISE ASSOCIATION OF GREECE

Skoufou 10

105 57 Athens - GREECE

Chairman: Mr. Stelios Stavridis (Piscines Ideales, SA)

Secretary: Ms M. Karagianni

Tel: +30 1 032 34 620

Fax: +30 1 032 38 865

Web Site: www.franchising.gr

e-mail : info@franchising.gr

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LATVIAN FRANCHISE ASSOCIATION

Latvijas Komerpcpilnvarojumu Asociacija

Lachplesha 81

Daugavpils LV - 5403 - Latvia

Chairman: Mr. Victor Aldersberg (Arhis)

Director: Mrs. Olga Krumpane

Tel: + 371 54 26349

Fax: + 371 54 27374

Web Site: www.franch.lv

e-mail: info@franch.lv; olga@franch.lv

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PORTUGUESE FRANCHISE ASSOCIATION

Associação Portuguesa da Franchise (APF)

Rua Viriato 25 3º

1050-234 Lisboa - PORTUGAL

President: Mr Joao Papa (5 à sec)

Executive Director: Mr Pedro Villa Franca

Tel: + 351 21 319 29 38

Fax: + 351 21 319 29 39

Web Site: www.apfranchise.org

e-mail: apfranchise@netcabo.pt

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SPANISH FRANCHISE ASSOCIATION

Asociación Espanola de Franquiciadores (AEF)

Avenida de las Ferias s/n - 46035 Valencia

Apda.(POB)476 - 46035 Valencia

SPAIN

President: Mr Xavier Vallhonrat Llurba (Lizarran)

Director Manager: Mr Eduardo Abadia González

Tel: +34 96 386 11 23

Fax: +34 96 363 61 11

Web site: <http://www.franquiciadores.com>

e-mail: aef@feriavalencia.com

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SWEDISH FRANCHISE ASSOCIATION

Svenska Franchise Föreningen (SFF)

Sofierogatan 3A

SE - 412 51 Göteborg - SWEDEN

Chairman: Mr Anders Fernlund (Delphi and Co)
Executive Director: Ms. Karen Kisker
Tel: + 46 31 40 55 10
Fax: + 46 31 81 10 72
Web Site: <http://www.franchiseforeningen.se>

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SWISS FRANCHISE ASSOCIATION

Schweizer Franchise Verband (SFV)
Stockerstrasse 38
CH-8002 Zürich - SWITZERLAND
Chairman: Mr Kieser Werner (Keiser Training AG)
Managing Director: Mr Christopher Wildhaber
Tel: +41 1 208 25 55
Fax: +41 1 208 25 26
Web Site: <http://www.franchiseverband.ch>

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DANISH FRANCHISE ASSOCIATION

Dansk Franchisegiver Forening (DFF)
Lyngbyvej 20
DK - 2100 Copenhagen - DENMARK
Chairman: Mr J. Frederiksen (IB Your Office)
Executive Director: Mr Finn Birkegaard
Tel: +45.39 15 82 82
Fax: +45.39.15.80.10
Web Site: <http://www.dk-franchise.dk>
e-mail: info@dk-franchise.dk

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HUNGARIAN FRANCHISE ASSOCIATION

Magyar Franchise Szövetség(MFSZ)
POB 446
Budapest
H-1537 HUNGARY
Chairman: Mr L. A. Erdélyi (Photo Porst/FÖFOTO Ltd.)
Secretary General/CEO: Dr István Kiss
Tel: +361.212.41.24
Fax: +361.212.57.12
Web Site: <http://www.franchise.hu>
e-Mail: franchise@franchise.hu

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SLOVENIAN FRANCHISE ASSOCIATION

Dimiceva 13,
SI - 1504 Ljubljana - Slovenia
Chairman: Mr. Stanislas Tomsic (Mercator d.o.o.)
Managing Director: Mr. Igor Pavlin
Tel: +386 1 56 82 331 (ext.148)
Fax: +386 1 56 82 775
Web Site: <http://www.franchise-slovenia.net>
e-mail: info@franchise-slovenia.net

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IRISH FRANCHISE ASSOCIATION

30 Tolka Valley Business Park, Ballyboggan Road, Glasnevin, Dublin 11, Ireland

Chairman: Mr. John Green

CEO: Mr. Michael Bradley

Tel: +353-1-499-1091

Fax: +353-1-830-3913

Website: www.irishfranchiseassociation.com

Email: michaelbradley@irishfranchiseassociation.com

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